LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 17 1966
JOHN F. DAVIS, CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOSEPH P. RUTH, Respondent, Pro Se
1325 Glenarm Street
Denver, Colorado

Messrs. Oberlin, Maky & Donnelly
1405 East Sixth Street
Cleveland, Ohio
Malcolm E. MacDougall, Esq.
144 West Colfax Avenue
Denver, Colorado
Charles D. Bromley, Esq.
330 Majestic Building
Denver, Colorado
Counsel of Record for Respondents.

July 29, 1966

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

No. 8698

JOSEPH P. RUTH, an individual, **Plaintiff,**

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS, **Defendants.**

CITY AND COUNTY OF DENVER, a municipal corporation, acting by and through its BOARD OF WATER COMMISSIONERS, **Third Party Plaintiff.**

vs.

FIREMAN'S FUND INSURANCE COMPANY and the AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants.**

MEMORANDUM DECISION DENYING MOTION FOR NEW TRIAL

On February 8, 1966, the plaintiff, appearing pro se, filed a motion for new trial supported by an extensive brief.

The record discloses that on October 18, 1963, I filed a memorandum decision, containing findings of fact and conclusions of law summarized on the last page of the decision as follows:

"It is concluded that claims 1-6 of the patent in suit were anticipated by the prior art including prior public uses; and that any differences existing between such prior art and subject matter of the patent would have been obvious to a person having ordinary skill in such art. The patented claims, therefore, are not believed to achieve the standard of patentability established by the provisions of 35 U.S.C.A. § 101-103."

Pursuant to the direction of the court the Clerk on October 18, 1963, entered judgment in favor of the defendants and against the plaintiff that the plaintiff take nothing on his complaint, no costs taxed.

On October 28, 1963, counsel for the plaintiff filed a motion for a new trial which was denied by the court in its order filed November 15, 1963.

On December 27, 1963, the plaintiff filed a letter in which he accused attorneys of improperly representing him, withdrew the request for appeal and urged that the decision be set aside by this court as being based on false testimony. In ruling upon that letter I stated:

"It is not clear whether the letter is intended as a motion for relief under Rule 59 or under Rule 60 of the Federal Rules of Civil Procedure. However, in the interest of an expeditious decision so that plaintiff if he desires a review will not abandon an appeal on the supposition that this court should or can set aside the judgment herein on the basis of his letter, I shall treat the letter both as a motion for new trial under Rule 59 and a motion for relief from the judgment under Rule 60.

"As so considered, I have carefully reviewed the letter in question and its enclosures. While there are general conclusions and charges made, there are no allegations of fact which would justify the setting aside of the judgment. The taking of the depositions complained of by the plaintiff out of his presence was not unusual, there were several other more important foundations for the decision and the plaintiff's position indicated in the letter, aside from the present charge against his counsel, was fully presented at the trial. As far as the court was able to observe, plaintiff's counsel represented him vigorously and ably. While the result manifestly has been disappointing to both the plaintiff and his counsel, the validity of the decision depends largely upon basic problems of patent law which should either be deemed controlling upon the present judgment or reviewed on appeal in the manner provided by law.

"Accordingly, it is believed that the court has no alternative but to deny the motions or request to set aside the judgment and it is so ordered."

On January 8, 1964, the court extended the time for the filing and docketing of the record on appeal to the 14th of February, 1964.

On February 11, 1964, a stipulation was filed, based upon the request of the plaintiff, that the appeal "be voluntarily dismissed and that the cost bond of the plaintiff be discharged". Based upon that stipulation Judge Chilson entered an order dismissing the appeal as the voluntary act of the plaintiff and ordering that the cost bond theretofore posted by the plaintiff be discharged and the surety exhonerated.

On March 19, 1964, counsel of record for the plaintiff filed notice of withdrawal as counsel. Apparently no order based upon that notice was entered.

It will thus be seen that not only has the statutory time for filing a motion for new trial expired, but a motion for new trial has heretofore already been denied and relief on the grounds sought here has been denied long since.

There is nothing now presented which would afford the court jurisdiction, nor which would justify the exercise of any discretion it might have to reopen the judgment entered in 1963.

Accordingly, whether the plaintiff's motion is considered as a motion for new trial or for relief under Rule 59 or under Rule 60 of the Federal Rules of Civil Procedure, it must be, and it is hereby, denied.

Dated this 7th day of February, 1966.

A. Sherman Christensen
United States District Judge
(Assigned)

A copy of the foregoing was mailed to following counsel of record this 7th day of February, 1966:

Ownbey, Manter & Lippman and
Edward O. Geer
Attorneys at Law
251 Clayton Street
Denver, Colorado 80206

Oberlin, Maky & Donnelly
Attorneys at Law
1405 East Sixth Street
Cleveland, Ohio

Charles D. Bromley, Esquire
Attorney at Law
Majestic Building
Denver, Colorado 80202

Eugene P. Helfer, Esquire
Attorney at Law
Denver, Colorado

Joseph P. Ruth
1325 Glenarm Place
Denver, Colorado 80202

Darla Phillips
Secretary to Judge Christensen

Appendix B

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH JUDICIAL CIRCUIT SITTING AT DENVER, COLORADO

TENTH DAY, MAY TERM, WEDNESDAY, JUNE 1st, 1966

No. 6679

JOSEPH P. RUTH, **Appellant**

8698 vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS, CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, FIREMAN'S FUND INSURANCE COMPANY and the AETNA CASUALTY AND SURETY COMPANY,

Appellees.

Appeal from the United States District Court for the District of Colorado.

PRESENT: Honorable Orie L. Phillips, Circuit Judge, and other officers as noted on the 31st day of May, 1966.

Before Honorable Delmas C. Hill and Honorable Oliver Seth, Circuit Judges.

This cause came on to be heard on motion of appellees to dismiss the appeal on the ground that the appeal is taken from the denial of a motion which was filed out of time.

On consideration whereof, it is now here ordered that said motion be and the same is hereby granted and the appeal be and the same is hereby dismissed out of this court.

A true copy as of record,

TESTE:

ROBERT B. CARTWRIGHT, *Clerk,*

By William L. Whittaker
Chief Deputy Clerk

Entered on the Docket August 1, 1966. G. Walter Bowman, Clerk, by Audrey Boreing, Deputy Clerk.

Received August 17, 1966, Office of the Clerk, Supreme Court, U.S.